IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No. 669 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE A.M.KAPADIA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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HASMUKHBHAI SHAMJIBHAI MISTRY - Applicant(s)

Versus

STATE OF GUJARAT - Respondent(s)

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Appearance :

MR JAL UNWALA FOR MR JB PARDIWALA for Applicant(s) : 1,
MR HM PRACHCHHAK APP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE A.M.KAPADIA

Date : 26/09/2005

ORAL JUDGMENT

1. Rule. Mr. HM Prachchhak, learned APP appears and waives service of notice of rule on behalf of the respondent – State of Gujarat.

2. By filing instant petition under Section 397 read with Section 401 of the Code of Criminal Procedure ('the Code' for short), the petitioner seeks to challenge the order dated 30.6.2005 rendered below application Ex.1 in Criminal Misc. Application No.192 of 2005 in Special Corruption Case No.66 of 2002 by the learned Presiding Officer, First Fast Track Court, Valsad by which the application filed by the petitioner praying to revoke the oral order passed by the investigating agency restraining the petitioner from encashing ten six year National Savings Certificate amounting to Rs.22,000/- has been rejected. The order further stipulated that the petitioner was permitted to encash the said ten National Savings Certificates and the amount received from the said National Savings Certificates shall be deposited with the Nazir Department of the Court within three days of the encashment of the said certificates and Nazir Department shall deposit the said amount in any nationalized bank in fixed deposit.

3. The petitioner was serving as Deputy Mamlatdar

at Valsad. On 23.10.1999 one First Information Report was lodged by K.G. Bhati, Assistant Director, Anti Corruption Bureau, Surat against the petitioner for offenses punishable under sections 13 (1) (e) read with section 13 (2) of the Prevention of Corruption Act, 1988 ('the Act' for short) on the accusation that the petitioner being a Government servant possessed assets worth Rs.2,53,000/- which were disproportionate to the known sources of his income. Investigation was carried out in this regard and charge-sheet was filed in the Court of Special Judge, Valsad on 16.7.2002 which culminated as Special Corruption Case No.66 of 2002.

4. Sanction under Section 19 was also prayed for to prosecute the petitioner and the same was accorded by the Collector, Valsad vide order dated 10.6.2002 in exercise of his powers under section 19 (1) of the Act.

5. In the list of assets found to be disproportionate to the known sources of income of the petitioner there is a reference of ten National

Savings Certificates of the amount of Rs.22,000/- which are in the name of the petitioner. The National Savings certificates were in fact not seized during the course of investigation but an undertaking was obtained from the petitioner that the National Savings Certificates will not be encashed on the date of maturity of the same. The statement in the form of an undertaking as well as the receipt is dated 6.11.1999.

6. Ten National Savings Certificates of the amount of Rs.22,000/- attained the maturity date and therefore the petitioner preferred an application being Criminal Misc. application No.192 of 2005 which was given Ex.1 in Special Corruption Case No.66 of 2002. In the said application the petitioner has prayed that ten National Savings Certificates have attained maturity and the petitioner may be permitted to encash the same and release the amount in favour of the petitioner. The learned Judge adjudicated the application and vide order dated 30.6.2005 partly allowed the application holding that it will be open for the petitioner to encash the ten National Savings

Certificates but the petitioner will have to deposit the entire amount with interest in the Nazir Department of the court within three days of the encashment and the Nazir of the Court shall invest the entire amount in a fixed deposit in any nationalised Bank, which has given rise to the present petition.

7. At the time of hearing of this petition, Mr. Prachchhak, learned APP, upon instructions received from Y.S. Navre, Police Inspector, ACB, Valsad who is also personally present in the Court, states that during the course of investigation it is found that the amount of Rs.22,000 which is invested by the petitioner in ten National Savings Certificates is not forming part of the disproportionate assets of the known sources of income of the petitioner. Therefore, the petitioner has not committed offence under section 13 (1) (e) of the Act with regard to that amount only. However, for rest of the amount, the petitioner has committed offence under Section 13 (1) (e) of the Act. Mr. Prachchhak has also drawn the attention of this Court to the letter dated 9.4.2002

written by the Deputy Commissioner, ACB, Ahmedabad addressed to the Collector, Valsad wherein it has been specifically stated that the amount of Rs.22,000/- which has been invested by the petitioner in ten NSC has been received from his mother. Therefore, explanation offered by the petitioner has been accepted. Mr. Prachchhak, learned APP, therefore, urged that the said amount may be released.

8. This Court has considered the submissions advanced by Mr. Unwala, learned advocate of the petitioner and the statement made by Mr. Prachchhak, learned APP for the respondent – State of Gujarat.

9. There is no dispute that against the petitioner one First Information Report was lodged for the offence punishable under sections 13 (1) (e) and 13 (2) of the Act on the accusation that the petitioner being a Government servant possessed assets worth Rs.2,53,000/- which are disproportionate to the known sources of his income. Therefore, a raid was carried out and during the raid 31 fixed deposit receipts

and 10 nationals saving scheme certificates were also found. During the course of investigation it was found that so far as 31 time deposit receipts are concerned, according to the investigating agency, it was disproportionate to the known sources of income of the petitioner whereas so far as ten NSCs amounting to Rs.22,000/- are concerned, they are not disproportionate to the known sources of income of the petitioner and, therefore, explanation offered by the petitioner has been accepted by the investigating agency.

10. In aforesaid view of the matter, according to this court, since ten NSCs amounting to Rs.22,000/- are concerned, they are not forming part of the disproportionate to the known sources of income of the petitioner and hence they are required to be released unconditionally by allowing this petition.

11. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The order dated 30.6.2005 passed by the Presiding Officer, First Fast Track Court, Valsad below Ex.1 in Criminal Misc.

Application No.192 of 2005 is hereby modified so far as it relates to the direction issued to the petitioner to deposit the entire amount with interest within three days on encashment of the ten NSCs amounting to Rs.22,000/- with the Nazir of the Court and it is ordered that the said amount of the ten NSCs amounting to Rs.22,000/- with interest be released forthwith from the seized property in favour of the petitioner. Rule is made absolute to the aforesaid extent.

(A.M. Kapadia, J.)

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